

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE DENTISTS INSURANCE COMPANY,
a foreign insurer,

Plaintiff,

v.

YONGCHANG CHOI, DDS, an individual,
and YONGCHANG CHOI, DDS, PLLC, a
Washington professional limited liability
company,

Defendants.

Case No. 2:21-cv-00451

**COMPLAINT FOR DECLARATORY
RELIEF**

The Dentists Insurance Company (TDIC) submits the following Complaint for Declaratory Relief pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57.

I. PARTIES

1.1 Plaintiff TDIC is a foreign insurer organized under the state of California with its principal place of business located in California.

1.2 Defendant Yongchang Choi, DDS is a resident of Washington.

1.3 Defendant Yongchang Choi, DDS, PLLC is a Washington professional limited liability company with its principal place of business in Washington. Upon information and belief, all members of Yongchang Choi, DDS, PLLC are residents of the state of Washington.

II. JURISDICTION AND VENUE

2.1 Jurisdiction is properly before this Court pursuant to 28 U.S.C. §1332, et. seq., as complete diversity exists among the parties and the amount in controversy exceeds \$75,000.

2.2 The Court has jurisdiction over this declaratory judgment action pursuant to 28 U.S.C. § 2201 because there is an actual and justiciable controversy between the parties with respect to the existence of insurance coverage under the policies of insurance issued by TDIC. A judicial determination and declaration of the rights and obligations of the parties is necessary and appropriate at this time because TDIC has no adequate remedy at law which will resolve the current controversy.

2.3 Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because this action involves a dispute over the application of insurance coverage under policies written out of the State of Washington, the alleged events and omissions which gave rise to this claim occurred in this district, and because Defendants are subject to this Court's jurisdiction.

III. FACTS

A. The Subject Loss

3.1 Upon information and belief, Defendant Yongchang Choi, DDS and Defendant Yongchang Choi, DDS, PLLC (collectively, "Choi") operate Advanced Implant Dental, a dental clinic located at 6840 Fort Dent Way, Suite 130, in Tukwila, Washington (hereinafter, the "Clinic").

3.2 Upon information and belief, Ms. Annie Miller is the contracted office manager for the Clinic.

3.3 On or about January 3, 2021, the sprinkler system in the unit above the Clinic malfunctioned, causing water to flood the building and the Clinic (hereinafter, the "Subject Loss"). As a result, the building and Clinic were closed. The cause of the malfunction is unknown.

3.4 Upon information and belief, Choi returned to work at the Clinic on February 19, 2021.

B. The TDIC Policy

3.5 TDIC issued a businessowners policy of insurance to Choi, policy number WA524112, with a policy period of November 1, 2020 through November 1, 2021 (hereinafter, the "TDIC Policy").

3.6 The TDIC Policy includes the following insuring agreement for Building Coverage:

II. COVERAGES

Subject to all the provisions of this policy, we will pay for direct physical loss of or damage to Covered Property caused by or resulting from a "Covered Cause of Loss" at the premises described in the policy Declarations.

Covered Property, as used in this policy, means the following types of property for which a Limit of Insurance is shown in the Declarations or is shown below:

A. Building

Building, meaning buildings or structures at the premises described in the Declarations and includes:

1. Fixtures, machinery and equipment if permanently installed, either in or on the building or within 1,000 feet of the described premises
2. Permanently installed appliances used for refrigerating, ventilating, cooking, dishwashing or laundering; fire extinguishing equipment; outdoor furniture; and floor coverings
3. Materials, equipment, supplies and temporary structures on or within 100 feet of the described premises used for making additions, alterations or repairs to the building or structures
4. Detached structures located at the premises described in the Declarations - this coverage

is limited to 10 percent of the value shown for building coverage at the same location and does not increase the limit of coverage shown in the Declarations. Detached structures do not include fences, radio and/or television antennas, towers or dishes, trees, shrubs or plants.

NDBPCF (01/2019)

3.7 The TDIC Policy includes the following insuring agreement for Business Personal Property Coverage:

B. Business Personal Property

Business Personal Property, meaning personal property that is used in your business and is:

1. Owned by you and located in or on the buildings at the described premises or in the open (or in a vehicle) within 1,000 feet of the described premises
2. Personal property, including leased personal property, which you have a contractual responsibility to insure
3. Property of others that is in the care, custody or control of your business - this property, however, is not covered for more than the amount for which you are legally liable, plus the cost of labor, materials or services furnished or arranged by you on personal property of others
4. Building glass, if you are a tenant and no limit of insurance is shown in the Declarations for Building Property. The glass must be owned by you, in your care custody or control, or you must be required to insure glass as part of your lease agreement.
5. Tenant improvements to the described building or structure. Improvements are fixtures, alterations, installments or additions that:
 - a) Are made a part of the building or structure you occupy but do not own
 - b) Are made or acquired at your expense but that you cannot legally remove

[...]

NDBPCF (01/2019)

1 3.8 The TDIC Policy includes the following insuring agreement for Business Income
2 Coverage:

3 **C. Business Income**

4 We will pay for the actual loss of "Business Income" you
5 sustain because of the necessary suspension of your
6 "Operations" during the "Period of Restoration". The
7 suspension must be caused by direct physical loss of or
8 damage to property at the described premises, including
9 personal property in the open (or in a vehicle) within 1,000
10 feet, caused by or resulting from a "Covered Cause of Loss".

11 We will only pay for loss of "Business Income" that occurs
12 within 12 consecutive months after the date of direct
13 physical loss or damage.

14 The amount of "Business Income" loss will be determined
15 based on:

- 16 1. The net income of the business before the direct
17 physical loss or damage occurred
- 18 2. The likely net income of the business if no physical
19 loss or damage had occurred, but not including any
20 net income that would likely have been earned as a
21 result of an increase in the volume of business
22 because of favorable business conditions caused by
23 the impact of the "Covered Cause of Loss" on
24 customers or on other businesses
3. The operating expenses, including payroll expenses,
 necessary to resume "Operations" with the same
 quality of service that existed just before the direct
 physical loss of damage
4. Other relevant sources of information, including but
 not limited to:
 - a) Your financial records and accounting
 procedures
 - b) Bills, invoices and other vouchers
 - c) Deeds, liens or contracts

"Business Income" does not apply to the loss of "Business
Income" incurred as a result of unfavorable business
conditions caused by the impact of the "Covered Cause of
Loss".

1 NDBPCF (01/2019)

2 3.9 The TDIC Policy includes the following insuring agreement for Extra Expense
3 Coverage:

4 **D. Extra Expense**

5 We will pay necessary Extra Expense you incur during the
6 "Period of Restoration" that you would not have incurred if
7 there had been no direct physical loss or damage to property
8 at the described premises, including personal property in the
9 open (or in a vehicle) within 1,000 feet, caused by or
10 resulting from a "Covered Cause of Loss".

11 The amount of Extra Expense will be determined based on:

- 12 1. All expenses that exceed the normal operating
13 expenses which would have been incurred by
14 "Operations" during the "Period of Restoration" if no
15 direct physical loss or damage had occurred. We will
16 deduct from the total of such expenses:
 - 17 a) The salvage value that remains of any
18 property bought for temporary use during the
19 "Period of Restoration" once "Operations"
20 are resumed
 - 21 2. Necessary expenses that reduce the "Business
22 Income" loss that otherwise would have been
23 Incurred "Extra Expense" means expense incurred:
 - 24 3. To avoid or minimize the suspension of business and
to continue "Operations":
 - a) At the described premises
 - b) At replacement premises or at temporary
locations, including:
 - i. Relocation expenses
 - ii. Costs to equip and operate at the
replacement or temporary locations
 4. To minimize the suspension of business if you cannot
continue "Operations"
 5. To repair or replace any property including
relocation expenses and cost to equip and operate at

the replacement or temporary locations. Business personal property purchased or leased that replaces the property damaged by a "Covered Cause of Loss" will be considered replacement Business Personal Property and will reduce the available Business Personal Property limit accordingly.

Note that we will only pay for Extra Expense that occurs within 12 consecutive months after the date of direct physical loss or damage.

NDBPCF (01/2019)

3.10 The TDIC Policy includes the following insuring agreement for Extended Business Income Coverage:

E. Extended Business Income

We will pay the actual loss of "Business Income" you sustain caused by any "Covered Cause of Loss" that results in direct physical loss of or damage to property at the described premises which occurs between the periods described below:

1. Beginning on the date your "Operations" are resumed after the "Period of Restoration"
2. Ending on the earlier of:
 - a) The date your "Business Income" could have been restored, at reasonable speed, to the same level that your "Business Income" would have been had there been no direct physical loss of or damage to property at the described premises
 - b) Thirty consecutive days after the date your "Operations" are resumed after the "Period of Restoration"

Extended Business Income does not apply to the loss of "Business Income" incurred as a result of unfavorable business conditions caused by the impact of the "Covered Cause of Loss".

NDBPCF (01/2019)

3.11 The TDIC Policy includes the following conditions regarding an insured's Duties

in the Event of Loss or Damage:

IX. PROPERTY LOSS CONDITIONS
[...]

C. Duties in the Event of Loss or Damage

You must see that the following are done in the event of loss or damage to Covered Property:

1. If a crime has been committed, contact the appropriate authorities.
2. Give us prompt notice of the loss or damage. Include a description of the property involved.
3. As soon as possible, give us a description of how, when and where the loss or damage occurred.
4. Take all reasonable steps to protect the Covered Property from further damage and to avoid further loss. If feasible, set the damaged property aside and in the best possible order for examination. Also keep a record of your expenses for emergency and temporary repairs, for consideration in the settlement of the "Claim". This will not increase the limit of insurance.
5. At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
6. Permit us to inspect the property and all records proving the loss or damage. Also permit us to take samples of damaged property for inspection, testing and analysis and permit us to make copies from your books and records.
7. If requested, permit us to question you under oath at such times as may be reasonably required about any matter relating to this insurance of your "Claim", including your books and records. In such event, your answers must be signed.
8. Send us a signed, sworn statement of loss containing the information we request to investigate the "Claim". You must do this within 60 days after our request. We will supply you with the necessary forms.
9. Cooperate with us in the investigation or settlement of the "Claim".
10. Resume all or part of your "Operations" as quickly as possible.

1 NDBPCF (01/2019)

2 3.12 The TDIC Policy includes the following provisions regarding Loss Payment:

3 **E. Loss Payment**

4 **1.** In the event of a loss covered by this policy, we have
5 the following options:

- 6 **a)** Pay the value of the lost or damaged property;
- 7 **b)** Pay the cost of repairing or replacing the lost
8 or damaged property;
- 9 **c)** Rebuild, repair or replace the property with
10 other property of equivalent kind and quality
11 to the extent practicable, within a reasonable
12 time; or
- 13 **d)** Take all or any part of the property at the
14 agreed or appraised value.

15 We will give notice of our intentions within 30 days
16 after we receive the sworn statement of loss.

17 **2.** We will not pay you more than your insurable
18 interest in the Covered Property.

19 **3.** Business Personal Property purchased or leased
20 which replaces Property Damaged by a Covered
21 Cause of Loss" will be considered replacement
22 Business Personal Property and **will** reduce the
23 available Business Personal Property limit
24 accordingly.

4. We will not pay any consequential losses such as
delay, loss of use or loss of market.

5. Subject to the applicable limit shown in the
Declarations we will determine the value of Covered
Property as follows:

a) All replacement cost (without deduction for
depreciation). Covered property damaged or
lost must be replaced within 180 days.

i. You may make a "Claim" for loss or
damage covered by this insurance on
an "Actual Cash Value" basis. In the
event you elect to have loss or

damage settled on an "Actual Cash Value" basis, you may make a "Claim" on a replacement cost basis within 180 days after the loss or damage. We will not pay on a replacement cost basis for any loss or damage until the lost or damaged property is actually repaired or replaced.

ii. We will not pay more for loss or damage on a replacement cost basis than the least of:

a) The amount it would cost to replace the damaged item at the time of loss with new property of similar kind and quality to be used for the same purpose on the same site; or

b) The amount you actually spend in repairing the damage, or replacing the damaged property with new property of similar kind and quality.

iii. In the event of a total loss of an article or articles, other than "Fine Arts", which are part of a pair or set, you may choose to have us pay the amount shown on the property schedule or the replacement value of the entire pair or set when the property is actually replaced. We will pay whichever is less. You must surrender the remaining pieces to us.

iv. If property is specifically scheduled in the policy, we will only pay up to the stated amount specified for each item.

b) The following property at "Actual Cash Value", unless specifically scheduled:

- i. Property of others;
- ii. Manuscripts;
- iii. Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac.

c) Glass at the cost of replacement with safety glazing material if required by law.

d) Tenants' improvements and betterments at:

- i. Replacement cost if you make repairs within a 180 days after loss;
- ii. A proportion of your original cost if you do not make repairs within 180 days after loss.

We will determine the proportionate value as follows:

- i. Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
- ii. Divide the amount determined in i above by the number of days from the installation of improvements to the expiration of the lease. If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.
- iii. Nothing, if others pay for repairs or replacement.

[...]

6. Our payment for loss of or damage to personal property of others will be only for the account of the owners of the property. We may work with the owners of the lost or damaged property to value the "Claim". If we pay the owners, such payments will satisfy your "Claims"s against us for the owners' property. We will not pay the owners more than their insurable interest in the Covered Property.

7. A party wall is a wall that separates and is common to adjoining buildings that are owned by different parties. In settling covered losses involving a party wall, we will pay a proportion of the loss to the party wall based on your interest in the wall in proportion to the interest of the owner of the adjoining building.

[...]

NDBPCF (01/2019)

3.13 The TDIC Policy includes the following provisions regarding Resumption of Operations:

G. Resumption of Operations

We will reduce the amount of your:

- a) "Business Income" loss, other than Extra Expense, to the extent you can resume your "Operations", in whole or in part, by using damaged or undamaged property (including merchandise or stock) at the described premises or elsewhere; and
- b) Extra Expense loss to the extent you can return "Operations" to normal and discontinue such Extra Expense.

NDBPCF (01/2019)

3.14 The TDIC Policy includes the following definitions which are relevant to the foregoing provisions:

SECTION I - BUSINESSOWNERS PROPERTY COVERAGE

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties, and what is and is not covered.

Throughout this policy, the words "you" and "your" refer to the Named Insured as shown in the Declarations. The words "we," "us" and "our" refer to the company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning as listed in PROPERTY DEFINITIONS.

I. PROPERTY DEFINITIONS

[...]

B. "Actual Cash Value" means:

- The cost of repairing damage to property when the damage is economically repairable, less reasonable deduction for wear and tear, deterioration, and obsolescence
- The market value of property in a used condition equal to that of destroyed property, when the loss or damage to property creates a total loss, if reasonably available on the used market
- The market value of new, identical or nearly identical property, less reasonable deduction for wear and tear, deterioration, and obsolescence

C. "Business Income" means:

- Net income (net profit or loss before income taxes) that would have been earned or incurred
- Continuing normal operating expenses incurred, including payroll
- Loss of rental income you incur as building owner

[...]

E. "Computer" means:

- Programmable electronic equipment that is used to store, retrieve and process data
- Associated peripheral equipment that provides communication, including input and output functions such as printing and auxiliary functions such as data transmission

"Computer" does not include programmable electronic equipment used to operate production or manufacturing-type machinery or equipment.

F. "Covered Causes of Loss" means:

- All risk of direct physical loss, unless the loss is limited in section IV, LIMITATIONS, or excluded in VIII, EXCLUSIONS

[...]

M. "Operations" means:

- Your business activities occurring at the described premises

N. "Period of Restoration" means the period of time that:

- Begins with the date of direct physical loss or damage caused by or resulting from any "Covered Cause of Loss" at the described premises
- Ends on the date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality "Period of Restoration" does not include any increased period required because of the enforcement of any ordinance or law that:
 - Regulates the construction or use or repair or requires the tearing down of any property
 - Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of "pollutants"

For "business income" coverage and extra expense coverage, the "Period of Restoration" begins with the earlier of:

- 24 hours after the interruption of utility or sewer services to the described premises caused by or resulting from direct physical loss or damage to water supply services or

power supply services from a
"Covered Cause of Loss"

- Immediately after the direct physical loss or damage caused by or resulting from any "Covered Cause of loss" at the described premises, other than the interruption of utility services

NDBPCF (01/2019)

3.15 TDIC reserves the right to assert any other policy language or coverage forms of the TDIC Policy that may be potentially applicable to this action.

C. TDIC's Claims Handling

3.16 On January 5, 2021, Ms. Miller reported the Subject Loss on behalf of Choi.

3.17 Upon receiving notice of the Subject Loss, TDIC opened a claim and began its claims investigation.

3.18 On January 20, 2021, TDIC issued an advance payment of benefits and expenses under the TDIC Policy in the amount of \$33,670.87 to Choi, as requested by Ms. Miller on behalf of Choi.

3.19 On February 1, 2021, TDIC issued an additional advance payment of benefits and expenses under the TDIC Policy in the amount of \$30,000 to Choi, as requested by Ms. Miller on behalf of Choi.

3.20 On February 3, 2021, TDIC issued an additional advance payment of benefits and expenses under the TDIC Policy in the amount of \$20,000 to Choi, as requested by Ms. Miller on behalf of Choi.

3.21 On or about March 12, 2021, Ms. Miller notified TDIC that the Clinic's CBCT

1 machine¹ was inoperable and had been inoperable since the Subject Loss.

2 3.22 On March 17, 2021, TDIC issued a payment in the amount of \$10,106.45 to Choi
3 for repairs to the Clinic caused by water damage as a result of the Subject Loss.

4 3.23 On March 24, 2021, TDIC issued payment in the amount of \$1,533.65 to Choi for
5 replacing two computers that were damaged by water as a result of the Subject Loss.

6 3.24 TDIC's investigation regarding the inoperative CBCT machine revealed that no
7 water reached the CBCT machine or the room where the CBCT machine was located. TDIC did
8 not find any evidence of water intrusion in or near the CBCT machine. Nonetheless, as requested
9 by Ms. Miller on behalf of Choi, TDIC continued its investigation regarding the inoperative CBCT
10 machine.

11 3.25 On or about March 29, 2021, Ms. Miller notified TDIC that if TDIC did not replace
12 the CBCT machine, a suit against TDIC would be filed.

13 3.26 To date, TDIC has issued a total of \$95,310.97 of benefits to Choi under the TDIC
14 Policy as a result of the subject claim.

15 3.27 TDIC's investigation of Choi's Building claims under the TDIC Policy is ongoing.

16 3.28 TDIC's investigation of Choi's Business Personal Property claims under the TDIC
17 Policy is ongoing.

18 3.29 TDIC's investigation of Choi's Business Income claims under the TDIC Policy is
19 ongoing.

20 3.30 TDIC's investigation of Choi's Extra Expense claims under the TDIC Policy is
21 ongoing.

22
23 ¹ "CBCT machine" will hereinafter refer to the Clinic's 3D imaging machine otherwise described as OP
24 2D 9X14 FOV that Ms. Miller reported was inoperable after the Subject Loss.

1 3.31 TDIC's investigation of Choi's Extended Business Income claims under the TDIC
2 Policy is ongoing.

3
4 **IV. THERE IS AN ACTUAL AND JUSTICIABLE CONTROVERSY AS TO TDIC'S**
5 **OBLIGATIONS UNDER THE POLICY**

6 4.1 TDIC incorporates by reference all the allegations contained in paragraphs 1.1 –
7 3.31 as if set forth fully herein.

8 4.2 The TDIC Policy provides coverage for direct physical loss of or damage to
9 Covered Property caused by or resulting from a "Covered Cause of Loss" at the premises described
10 in the policy Declarations, as those terms are defined.

11 4.3 The TDIC Policy provides Building Coverage, as described above.

12 4.4 There is an actual and justiciable controversy as to the amount of benefits Choi is
13 allowed to recover under the TDIC Policy's Building Coverage, as described above.

14 4.5 The TDIC Policy provides Business Personal Property Coverage, as described
15 above.

16 4.6 There is an actual and justiciable controversy as to the amount of benefits Choi is
17 allowed to recover under the TDIC Policy's Business Personal Property Coverage, as described
18 above.

19 4.7 The TDIC Policy provides Business Income Coverage, as described above.

20 4.8 There is an actual and justiciable controversy as to the amount of benefits Choi is
21 allowed to recover under the TDIC Policy's Business Income Coverage, as described above.

22 4.9 The TDIC Policy provides Extra Expense Coverage, as described above.

23 4.10 There is an actual and justiciable controversy as to the amount of benefits Choi is
24 allowed to recover under the TDIC Policy's Extra Expense Coverage, as described above.

1 4.11 The TDIC Policy provides Extended Business Income Coverage, as described
2 above.

3 4.12 There is an actual and justiciable controversy as to the amount of benefits Choi is
4 allowed to recover under the TDIC Policy's Extended Business Income Coverage, as described
5 above.

6 **V. CAUSES OF ACTION FOR DECLARATORY RELIEF**

7 5.1 An actual and justiciable controversy exists as to the amount of benefits Choi is
8 entitled to recover under the TDIC Policy for losses resulting from the Subject Loss.

9 5.2 Pursuant to and in accordance with 28 U.S.C. § 2201, TDIC asks that the Court
10 grant declaratory relief and enter a judicial determination regarding the amount of benefits Choi is
11 allowed to recover to under the TDIC Policy for losses resulting from the Subject Loss.

12 **VI. PRAYER FOR RELIEF**

13 WHEREFORE, TDIC, having specifically alleged the foregoing, now prays for the
14 following relief:

15 1. For a declaration of the rights and obligations of the parties hereto under the TDIC
16 Policy.

17 2. For a declaration as to the amount of benefits that Choi is allowed to recover under
18 the TDIC Policy.

19 3. For all pre-judgment and post-judgment interest as allowed by applicable law.

20 4. For attorney's fees and costs allowed by applicable law.

21 5. For other and further relief as the Court deems just and equitable.

1 DATED this 5th day of April 2021.

2 **LEATHER LAW GROUP**

3 /s/ Thomas Lether

4 Thomas Lether, WSBA # 18089

5 s/ Eric J. Neal

6 Eric J. Neal, WSBA #31863

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